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Supreme Court of the United States.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1904.

No. 61.

GEORGE F. HARDING, *Plaintiff in Error,* *vs.* THE PEOPLE OF THE STATE OF ILLINOIS, *Defendant in Error.*	Error to the Supreme Court of Illinois.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

In this case the defendant in error filed its motion to dismiss the writ of error, and to affirm the judgment of the Supreme Court of Illinois, which motion is pending to be heard together with case upon the merits.

The question of constitutionality here sought to be raised by the plaintiff in error relates solely to the procedure in the state courts of Illinois, to wit:

(1) All question as to the constitutionality of the statute under which the action is brought is waived and abandoned in this court, and is not urged in the brief of the plaintiff in error, viz.: The plaintiff in

error presents thirteen points (pages 42 to 49 plaintiff's brief) upon which he relies, all of which relate to questions of procedure in the state courts, and no question is therein presented raising any question as to the constitutionality of the statute under which the action is brought.

See brief of plaintiff in error, pages 42 to 49, inclusive.

(2) No question of the constitutionality of either the statute or the procedure was raised in the assignment of errors to the trial court in the Supreme Court of Illinois, except by implication and indirection, viz., the only reference to such questions in said assignments of error must be implied from the following language:

"The finding and judgment of the court were erroneous for the several reasons stated in the points filed in support of the motion to set aside the finding and grant a new trial."

Clause 11, page 109 record.

The only portion of the motion for a new trial which relates to any question of constitutionality is found in clauses 25, 26 and 27 of motion, page 106 record, and reads as follows:

"25. The statute under which this action is prosecuted is contrary to the constitution of the State of Illinois."

"26. The statute under which this action is prosecuted is contrary to the Constitution of the United States."

"27. The proceeding under said statute is a taking of property without due process of law and otherwise unconstitutional."

(See motion for new trial, page 106 record.)

None of the above questions were urged in the Supreme Court of Illinois.

(See decision of Supreme Court of Illinois, page 113 record.)

All the questions here raised by the plaintiff in error as set out in his brief, relate to questions of pleading, practice and proof in the state courts of Illinois, and were presented and reviewed by the Supreme Court of Illinois, which court affirmed the judgment of the court below and are therefore fully settled, since no question of the constitutionality of any statute is involved.

The mere question of the sufficiency of the pleadings and proof or the relevancy of testimony when raised in a state court, are matters solely within the jurisdiction of the state court where no questions of the constitutionality under the Constitution of the United States are urged in the court of last resort in the state.

Counsel for defendant in error therefore respectfully submits:

(1) That there is no Federal question involved in the case at bar.

(2) That all questions of error as to pleading, practice and proof in this case have been adjudicated in the Supreme Court of Illinois, and that there is no question presented in the record to be reviewed by this Supreme Court, and that the writ of error of the plaintiff in error ought to be dismissed and the judgment of the Supreme Court of Illinois affirmed.

Respectfully submitted.

ROBERT S. ILES,

Attorney for Defendant in Error.